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Van Hise, Charles Richard

Co-operation in industry

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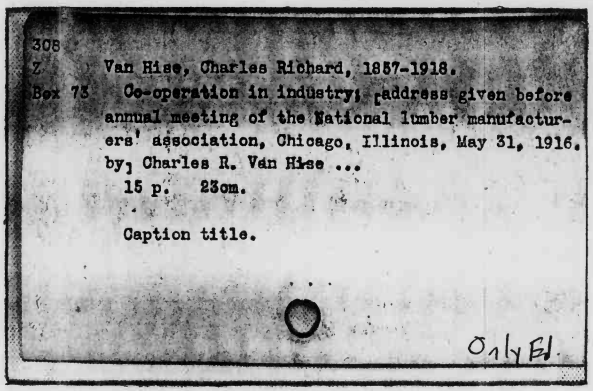
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Co-operation In Industry

Charles R. Van Hise
President, University of Wisconsin
Madison, Wisconsin

Mr. President and gentlemen, in speaking to this Association I shall try to give some reasons why coöperation in an industry should be allowed, with certain limitations not only in regard to lumber manufacture, but with many of the other products. However, if the principle of coöperation be accepted as sound and applicable to business, we must at the same time accept the principle of regulation in order that the public may be protected. There are certain broad principles which apply to the regulation of an industry, concerning which there is substantially no difference of opinion. It is generally agreed in this country that monopoly should be prohibited. It is also well settled that unfair practices in business should not be allowed, and therefore competition should obtain. If coöperation is allowed in business, it should be with the understanding that there should not follow monopoly or unfair practices or elimination of competition.

Extent to Which Coöperation Should Be Allowed

There are great differences of opinion concerning the extent to which coöperation or the magnitude of coöperation in business should be allowed. I suppose none of us believe that we shall ever return to the condition of the old cross-roads grist mill, in which a small amount of flour or meal was ground, the neighbors carrying the grain to the mill. Also, I presume it is agreed that we proba-

Address given before annual meeting of the National Lumber Manufacturers' Association, Chicago, Illinois, May 31, 1916.

bly shall not return to the condition of the lumber business alluded to by the mayor, when he owned a mill which would manufacture 5,000 feet, board measure, in a day. (Laughter.) There are very great differences of opinion concerning the extent to which coöperation should be allowed. It has been held and, indeed, is held by Mr. Brandeis at the present time, that if coöperation in business goes to the extent of 30 per cent or more, the presumption is that such coöperation is unlawful. However, a fundamental thing appears at this point. If concentration and coöperation produce efficiency, they should be retained. If, on the other hand, they result in a lack of efficiency, in undue prices and extortion, they should not be allowed. In this matter there has been only one investigation made in the United States, and that has been concerning the steel industry by the Bureau of Corporations. It was found by that bureau that the "big five" in the steel industry, the United States Steel and four others, have a great advantage over the smaller organizations; that they were able to produce pig iron at an advantage of about $2.50 a ton as compared with the smaller industries, the smaller organizations, and for steel billets about $5.00 a ton cheaper. So that we know in the steel industry that a one-hundred-million-dollar corporation is more efficient than a ten-million-dollar corporation. Therefore, it follows that the line of progress is to find out how large organizations are which do increase efficiency. This investigation which has been made by the Bureau of Corporations concerning this one industry should be extended to other industries, and if it is found that large organizations and coöperation which results in organizations working as a unit give efficiency, that should be allowed. For my part I believe such investigation will show that few industries in this country have gone beyond the stage which gives higher efficiency, but if we do permit coöperation there must be some way by which the public will be protected; that advantage of the coöperation will not be taken to exact undue prices from the public or to engage in unfair practices against smaller competitors or to reach the stage of monopoly.

The Old Common Law

Possibly at this stage it will be well to allude to the laws which have obtained in the past regarding coöperation in industry. In the middle ages in England and most other countries there were

27 March, 1920 - C. R. W.

very severe laws against coöperation in business of all kinds, whether limitation of output, division of territory, fixing of prices, etc.; but it was found that these very restrictions did not result in benefits to the public, but in detriment to the public; and so the laws were gradually loosened; the interpretations by the courts were broadened until coöperation in business was recognized as legitimate. Thus under the common law it was possible to reduce competition by combination, to realize a fair price, to provide for exclusive selling agencies, to divide output and territory.

Precisely the same situation obtained in this country as in England in the early days in the colonies. There were very strict laws against all combinations and organizations which could in any way restrain trade; but this same change continued, in the interpretations of the courts, until it was legal in this country to do all the things which I have mentioned, but in 1890 the Sherman Act was passed, under which it was made illegal to have any combination or coöperation which restrained trade in any way whatsoever, and by enactment we turned the laws back to the situation of the Middle Ages. No sooner was the Sherman Law enacted than thirty or more States enacted similar or even more drastic laws; so it was not allowed under the wording of the statute to have coöperation or restraint of trade in any way whatsoever in this country, either in the States or in interstate commerce.

The Sherman Act, however, had a two-fold effect. Its first effect was precisely the contrary of what was expected. It resulted not in breaking up the combination, not in eliminating coöperation, but in accelerating the process. Up to that time there had been the loose coöperation without confederation, but no sooner was this law passed than the trust was created which took over the different units through a common organization for all.

Effects of the Sherman Law

When the trusts were declared to be illegal, this led to complete combination; so that there were created the great corporations as the result of the Sherman Act, an intermediate stage being that of the holding company. Thus the first effect of the Sherman Act was to accelerate in almost every line of industry the very thing which it was intended to prevent and combination, in consequence of that Act, and the State Acts went much

further and more rapidly than the same processes went in other countries, in Germany and in England, where the old loose form of coöperation through associations and through pools was allowed.

Another effect of the Sherman Act, and that was the disastrous one, was that the business men were all the time under the menace of prosecution. They did not know precisely what their rights were under the law. They did not know whether the union of corporations into the larger combination or the complete merger was legal, so that there was complete uncertainty as to the meaning of this law for many years; and, indeed, great uncertainty existed until the time the cases of the tobacco corporation and Standard Oil came into the United States Courts. It was seen that if that law were literally interpreted and every combination and contract which in any way restrained trade was destroyed, that this would result in disorganizing the business of the country. In consequence of that fact the Supreme Court of the United States—I say "in consequence of that fact"—the Supreme Court of the United States by interpretation put into the law a word which at various times it had been found impossible to put into the law through an act of Congress. It was held that not all combinations and contracts in restraint of trade are illegal, but only those in which restraint is unreasonable or undue; and so, by action of the court, there was a movement a long way towards the conditions which obtained before the enactment was passed; that is, by decision the court went as far as it could toward producing the condition which existed previous to the enactment of the Sherman Act—: and under the Sherman Act since that time various organizations have been destroyed, in which it has been found that the coöperation is undue or there is unreasonable restraint of trade. Some of these organizations which have been destroyed are the Standard Oil Company and the American Tobacco Company. We have had politicians congratulate themselves, and the different administrations in Washington have congratulated themselves upon the fact that they have destroyed these combinations and have caused the dissolution of others.

Has the Public Benefited?

But has anyone asked the question, in what respect has the public been benefited by these dissolutions? I suppose you are able

to get oil cheaper than you were before the Standard Oil Company was dissolved, and doubtless the brands of cigars which you are smoking, your favorite brands, are cheaper than they were before the American Tobacco Company was dissolved. Having merely to buy an occasional gallon of kerosene or gasoline, I have been wondering where I come in in this dissolution. (Laughter.) I noticed that within a year after the Standard Oil Company of New Jersey was dissolved that the price of its stock increased from 650 to 1170. If I had been fortunate enough to be an owner of Standard Oil stock, I would have understood better than I do now the benefits of the dissolution. (Laughter.) In the same way tobacco increased in its price, although not so greatly.

I suggested to the Commissioner of Corporations that before we went farther into this matter of the dissolution of corporations, it would be well to inquire into the effect; and since that time there has been an investigation made in regard to the effect of the dissolution of the American Tobacco Company. From what Mr. Davies says in regard to this matter I quote his conclusions:

> "In conclusion it may be stated that the study of prices, costs and profits in the tobacco industry, without taking into consideration other factors in the competitive situation, indicates that the decree of dissolution has resulted in the successor companies competing with each other for business in most branches of the industry, but has not affected wholesale or retail prices. The successor companies have also competed with the smaller tobacco concerns, and, collectively, have won business from them in some branches and lost to them in others. As a consequence of competition the rate of profit of the successor companies has been reduced, although their rate of profit is still high. In general, this competition has seriously reduced the profits of the other companies.
>
> "This reduction in profits has not been caused by increased cost of manufacture, but by increased expenses of distribution, and principally by the increase in expenditures for advertising. As the sale of tobacco products depends largely on the advertisement of brands, competition in the tobacco business necessarily increases advertising expenditure. In other words, for tobacco products—and it may be true also for other brand articles—the social cost of the system of competition is largely found in extraordinary advertising expense, and this would seem to be inevitable for brand articles so long as they have a proprietary character."

In other words, the only effect of the dissolution of the tobacco combination has been to decrease the profits of the manufacturers without one particle of benefit to the consumers or to the producers

of the raw article. Wherein, then, has the public been benefited? Would it not have been much better to have taken another line of action? If the prices which were charged by the American Tobacco Company were excessive because of the fact it was a monopoly, would it not have been better to have reduced the prices so far as they were excessive, so that the consumer of tobacco would have had the advantage which could have obtained if the company had been allowed to continue as a unit? There is no question whatever that just as soon as an organization becomes so large as to be a monopoly, or by coöperation, to control the market, that it is subject to regulation under the common law. This is so well established that it cannot be gainsaid, and therefore as soon as the profits became unreasonable, the excess should have gone to the producer, should have gone to the consumer, and under a proper system of regulation.

But this process of dissolution has gone in even more extraordinary direction of which I have time to give only one illustration. The Attorney General of the United States insisted that the American Telephone Company and the Western Union Telegraph Company should dissolve. He said that if they did not dissolve he would begin a prosecution under the Sherman Act, and in consequence Mr. Vail, the president of the company, agreed that the two organizations would dissolve. What has been the effect of that dissolution? We know what happened through the union of the two companies. The night letter and the day letter were put in; prices were reduced. It was possible to send a message, partly by telephone and partly by telegraph, which benefited you in your business and benefited everybody else. A single office could be used by the Western Union and by the Telephone Company, and in rural districts one operator would serve for both. The wires which were used for the telephones could be used for the telegraph; one trunk telephone line, two copper wires could be used for conversation and at the same time for sending telegraph messages without interfering with telephone conversations; common poles could be used. In every respect there was advantage in their complete coöperation. In a few weeks after the dissolution a committee of experts of the Postoffice Department, who had been working upon this matter for two or three years, reported that the government should acquire all the telephone and telegraph lines of the country and operate them as

a public monopoly, because of the great economies which came from their concentration. (Applause.) If the Attorney General is right, the commission of experts is wrong.

It is obvious that the public was rendered great disservice when those two organizations were dissolved. If the telephone company and the telegraph company were charging too high rates or not giving proper service, there was a remedy. The appeal could be made to the State Commerce Commissions and to the Interstate Commerce Commission to reduce rates to a reasonable amount; and if the rates were excessive, then the public could have lower rates, precisely as has been done in the case of the public utilities and the railroads, again and again. We could have had all of the advantages of these economies; and yet it is a most extraordinary thing that all political parties and political orators before the public praise these things.

Where have you seen, anywhere, in any magazine or newspaper in the United States, or anywhere else, any explanation by anybody of the benefits the public has received because of these dissolutions? If you have found such an article anywhere by any politician or public service association, whatever his faith may be, you have been more fortunate than I have been, for I have been unable to find one.

Proposed Remedies

My proposal therefore, gentlemen, is neither regulated competition, nor regulated monopoly; but the retention of competition, the prohibition of monopoly, permission for coöperation and regulation of the latter. These principles apply to all lines of business, but they are especially applicable to those natural resources limited in quantity in which waste will result in loss to future generations. (Applause.) This may be illustrated, perhaps, best by coal. To make our coal fields took the building of the world, not yesterday, not the past hundred years, but millions of years. There is no possibility of increasing the store by one ton. We are in the same situation in regard to our coal as we would be if we had a bank account upon which we could draw throughout our lives but could not add to it one dollar. It must last throughout the life of the individual. Just so the coal deposits must last throughout the life of the nation; and any competitive system which results in the wasteful exploitation of that coal is a detriment to

succeeding generations, is a crime of this generation toward our successors; and yet there is no question that the enforcement of the Sherman Act, under which selling agencies have not been allowed, under which companies have not been allowed to coöperate to limit the output, under which they have not been allowed to divide territory, has resulted in most wasteful exploitation; the richer part of the richer veins are robbed because the competitive situation must be met.

In Chicago there cannot be one selling agency for the different coal companies which operate in Illinois, but there must be many selling agencies, and the coal of Pittsburgh must come into Illinois and the Illinois coal go toward Pittsburgh; every one of which things makes unnecessary costs, but all of which are inevitable under the extreme competitive system. Because of these facts it is necessary to waste the coal. If at the very same prices the different mines could coöperate in the limitation of the output, avoidance of cross freights, gauging the market in advance, and division of territory, they could mine their coal more cheaply, have a greater profit for themselves and conserve our resources; yet under our principles of competition, compelled by the Sherman Act, we have this situation.

Precisely the same principles apply to lumber that apply to coal, although perhaps not to quite the same extent, for it is possible to reproduce timber—80 years or 100 years may do it. Therefore the case cannot be made so decisive, but we know that in this country we are cutting our timber several times as rapidly as it is being produced. I do not know the precise figures, but I suppose it is three or four times as fast as it is being grown; and it is certain that in the future there will be a shortage of lumber. Hence the same principles apply as to coal. The lumbermen's associations should be allowed to coöperate, to avoid cross freights so far as possible, to freely gauge the market and decide how much of a cut there shall be, so that there shall be no waste, and they should be allowed to coöperate through a selling agency in the large centers. I have a statement from Mr. Weiss, of the Forest Products Laboratory, saying that something like 65 per cent of the timber standing in the woods is lost; that only about 35 per cent reaches the ultimate consumer. He says of the lumber cut in the United States, approximately 40,000,000 feet board measure,

the waste in the woods and the mill approximates 62,000,000 cords of 100 cubic feet of solid wood each.

This coöperation, however, should be a two-fold one. If we have our laws so changed that these things are possible, the lumbermen, by the efficiency of their logging operations and their milling, by use of the small pieces and by using the by-products should gain the highest possible output from the timber cut. If the Government attempts to protect your business by giving you laws which are favorable to conservation, then it becomes incumbent upon you to coöperate and conserve the timber so far as possible for future generations by economical utilization. However, this aspect of the matter is one which you will discuss and which I have not time to go into. I simply lay down the broad principle for your consideration.

The Clayton Act

The question now rises, "What can be done to meet the existing situation?" In this matter it is necessary to allude to still another law which has been passed, and very recently, which, I suspect, will disturb you in the future if it is not changed, even more seriously than the Sherman Act—and that is the Clayton Act. The Clayton Act was passed at the same time the Trade Commission was created. The Clayton Bill prohibits all coöperation of every kind, the result of which is substantially to lessen competition. This is a wholly new principle in regulatory action. I know of no such law before—there never has been such a principle in the common law in this country, nor in statute law, nor in the law of any other great country. It is unlawful, under the Clayton Act, for corporations to combine when the result of that combination is to substantially lessen competition; it is unlawful to discriminate in prices between different purchasers when that substantially lessens competition; it is unlawful to control the sale or contract prices, when the result is to substantially lessen competition; it is unlawful for a corporation to acquire the stock of another corporation in the same line of business, if the result is to substantially lessen competition. That something more is meant by this law than by the Sherman Act is shown with perfect conclusiveness by one of the sections which I shall read:

"That no corporation engaged in commerce shall acquire, directly or indirectly, the whole or any part of the stock or other share capital of another corporation engaged also in commerce, where the effect of such acquisition may be to substantially lessen competition between the corporation whose stock is so acquired and the corporation making the acquisition, or to restrain such commerce in any section or community, or tend to create a monopoly of any line of commerce."

Since restraint of trade and monopoly are illegal under the Sherman Act, it is clear that something new is meant. If there are on a country cross-roads three grocery stores, and two of those stores unite, that is substantially lessening competition. It is not restraint of trade because another grocery store may come there at any time; hence, restraint of trade has not followed, but competition has been lessened. Take the Atlantic steamship pool case. It has recently been decided in the courts of New Jersey that the Atlantic steamship pool, which was substantially a monopoly, was not in contravention of the Sherman Act, because while the pool did agree upon a division of business and did agree upon prices, those prices had been reasonable, and the public had been benefited by the stability of the prices; but there could not be any question that if action had been under the Clayton Act instead of the Sherman Act, it must have been dissolved as being a substantial lessening of competition.

Therefore, we have at the present time not one act, but two acts which are menacing business, the Clayton Act and the Sherman Act, and even yet we don't know what the Sherman Act means, though it has been said that all you have to do is to ask a lawyer to find out what it means, and proceed under the advice of the lawyer. About the same time the District Court of New Jersey made the decision mentioned, the United States Court at Minneapolis, in the International Harvester case, decided that that corporation controlling much less of the business than the Atlantic steamship pool company controlled, was a monopoly and should be dissolved. So we have two courts of the United States, in two sections of the country, in cases which are substantially identical, giving opposite decisions, and that after the law has been in force twenty years. This set of judges say, "In our opinion this is unreasonable." Another set of judges say, "This is reasonable." It is a matter of personal opinion.

The Principle Needed

We therefore need to have a principle in this case upon which we can rely. I proposed to a committee of Congress that this principle be added to the first section of the Sherman Act:

"The restraint of trade or commerce meant by this section is that restraint of trade which is detrimental to the public welfare; and the presumption is that any restraint of trade is thus detrimental."

If that amendment were passed, as an amendment not only to the Sherman Act but to the Clayton Act, in the interpretation of those two laws, we would have a principle upon which we could go, so that we could decide whether or not the acts in which you engage are legal or illegal.

This principle suggested is not new. When I proposed it I did not know that it had been adopted in Australia, but later I found out that is the fact. The Australian law prohibits a long list of things, but after giving the list it says: "It will be sufficient defense of any of these things that it be shown that it is not to the detriment of the public." Precisely the same principle is now the law of England. Since I offered that proposed amendment, the Lord Chancellor of England, Haldane, has decided, in the Salt case, that whether a corporation, which is in fact a monopoly, should be dissolved or not, is dependent upon whether or not that monopoly is a benefit to the public, and it was found that the salt monopoly of England had been charging reasonable prices; that the prices had been stable; that in consequence of it the people had been benefited, and the high court of England refused to dissolve that corporation.

If this principle were adopted it would follow that all lines of business would be protected, and this is certainly the right course to pursue; but if it prove not feasible to get so broad an enactment, it may be possible to get an amendment along other lines.

At the present time a joint committee of the Chamber of Commerce of the United States and the American Federation of Labor have been at work upon this matter. This committee, of which I have the honor to be a member, has made another proposal. The proposal of this committee is that contracts and agreements among persons, associations or corporations engaged in development of the natural resources, as articles of commerce, among the several States, shall be lawful, when such contracts and agreements tend

to utilize and conserve natural resources, protect human life, lessen accidents, and further the public interest—precisely the same principle as proposed by me, but limited to natural resources. The first is preferable, but if the second can be secured it will protect those lines of business which do primarily depend upon the natural resources; and it seems to me that this lumbermen's association can well come to the support of the National Chamber of Commerce in securing the enactment of this law. (Applause.) This general statement should be qualified by proper safeguards.

How the Public Can Be Protected

In what way is the public to be protected in case these laws are enacted? Through the extension of the powers of the Interstate Trade Commission and State Trade Commissions. When it was proposed, four or five years ago, at Harvard University, in an address which I made, that we should have a Federal Trade Commission to control industry along these lines, nobody would have anything to do with it. It was regarded as wild Wisconsin radicalism. Neither the Republican party nor the Democratic would have anything to do with it during the last Presidential campaign. They both denounced it. Yet, when Congress assembled to consider what should be done, more than 90 per cent of the remedial measures introduced contained the Federal Trade Commission idea. The law was passed, and it has gone a long way in the right direction.

The Lumbermen's Association, I understand, have taken their case before the Federal Trade Commission. However, that commission, whatever its good will, can only interpret existing laws and guide you in your action in conformity with those laws; and therefore at the present time it must advise you against any form of coöperation which results in the substantial lessening of competition. It must advise you against undue restraint of trade; and therefore its decision may not be what you hope for in regard to selling agencies, limitation of output and division of territory, because the law does not permit the commission thus to rule. Therefore it becomes incumbent upon business men, if the Trade Commission shall exert their full power and accomplish what they expect, to get one of these amendments passed. If the government does give you this authority, and allows that coöperation which is not to the detriment of the public welfare, it will be necessary upon

your part to prove, in every case, that the coöperation which you propose is for the benefit of the public and not to the detriment of the public; and therefore this Trade Commission should be given ample authority, not only to inquire into all contracts and combinations and arrangements which limit output, which divide territory, which provide for common selling agencies, but they should inquire into them and find whether or not, considering all the circumstances, coöperation is for the benefit of the public as well as for the benefit of yourselves. If your coöperation goes to the extent of the control of the market anywhere, the Federal Trade Commission should have authority to pass upon prices, just as in the case of the public utilities.

If you limit competition so that the market is controlled either by one corporation having command of the market or by 100 commanding the market, the public is helpless unless they have some authority concerning prices, just as do the public utilities commissions in regard to transportation. Notice my limitation—only where the market is controlled. So long as there is free competition price regulation is not necessary. It should be remembered that in this matter, as has been pointed out, the prices which you can charge for lumber are somewhat controlled by the articles which come in competition with it—cement and other articles. If the prices are unduly raised the amount of material used will be lessened. However, I would not give an opinion, whether that control would be sufficient in case there is monopoly or complete control of the market; but I put before you the two alternatives. You may proceed along the old lines, the lines which are now unsatisfactory to you, with the menace of the Sherman Act and with the menace of the Clayton Act, resisting control, or you may aim to coöperate along these lines; but at the same time if you get that grant, admitting broadly the principle of regulation, that coöperation implies regulation. For my part I believe that is the line of progress, not only for the lumbermen but for the coal men, the iron ore men, for the manufacturer everywhere. The time has gone by when the principles of cut-throat competition can result in the most efficient development of our industries. (Applause.) And especially that will be true with regard to foreign trade after this war is over.

Foreign Competition

The Sherman Act not only forbade interstate coöperation, but it forbade coöperation in international trade. One of its effects has been to prevent the development of our foreign trade, because the producers of England and the producers of Germany have been able to coöperate in their foreign marketing. When this war is over we shall not have simply coöperation in Germany and in England, but we will have national coöperation. Already Great Britain and France are buying as a nation and selling as a nation. The great efficiency of that concentration once gained will not be lost. Already the neutral countries, Denmark, Norway and Sweden, are acting along these lines. When the war ends there will be national combination against our industries; the unified products of Germany, through one great centralized organization, will compete with our products, and it may be that the same thing will be true in regard to England. If that situation arises our foreign trade cannot develop unless we can have the efficiency of coöperation.

It is enormously expensive to establish selling agencies in Rio, Buenos Ayres and other cities in South America and elsewhere. It is not possible for each of you lumbermen to do it, but if such a national organization as this can have one selling agency in Rio, Buenos Ayres and other South American cities, you will be benefited. Hence it is necessary to have this amendment, not only for trade between the States, but it is necessary to have it for the development of foreign trade. My proposal would allow also laborers to coöperate along legitimate lines, so long as their coöperation is not detrimental to the public; it would allow farmers to coöperate so long as their coöperation is not detrimental to the public.

All Partners Together

Why, gentlemen, isn't it an amazing situation? It is right to coöperate in religion; it is right to coöperate in education; it is right to regard every man as your brother in every other field of human endeavor; but it is unlawful to coöperate in business! The conclusion is absurd, but if we succeed in securing coöperation in business, along proper lines, we must also coöperate in the elimination of unfair practices; we must coöperate in giving the public reasonable prices, for we are, under those circumstances, all partners together for the advancement of the nation. (Applause.)

* * * *

The President: Gentlemen, we have a very interesting paper as the next on the program. I desire to thank Dr. Van Hise for his address. He did not quite catch what I stated in regard to the activities of the National Association in regard to the Federal Trade Commission. We laid our troubles before them last July and have continued to do it since that time at various periods. The lumbermen who have attended these meetings have represented the interests of the lumber industry as a whole; they presented their case to the Federal Trade Commission strictly on the basis concerning the interest the public have in the lumber industry and the timber supply of this country, and they are viewing it from that standpoint. The public have an interest. I don't think they have been educated to know that they have an interest, but they are getting there very fast.

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